

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RYAN THOMPSON,

Plaintiff,

v.

No. 1:23-cv-01046-JFR

AMPLER CHICKEN LLC,
SAMANTHA RODNEY and
BRITTANY GONZALES,

Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING MOTION TO PROCEED IN FORMA PAUPERIS

Plaintiff filed a motion to proceed *in forma pauperis* using the form “Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form).” *See* Doc. 2, filed November 21, 2023 (“Short Form Application”). After the Court notified Plaintiff that the Short Form Application does not provide sufficient information for the Court to determine whether a plaintiff is unable to pay the required fees and that the Court requires plaintiffs seeking to proceed without prepaying fees to file the Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (“Long Form Application”), Plaintiff filed a Long Form Application. *See* Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form), Doc. 6, filed November 30, 2023.

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

Menefee v. Werholtz, 368 Fed.Appx. 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962). “The statute [allowing a litigant to proceed *in forma pauperis*] was intended for the benefit of those too poor to pay or give security for costs....” *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 344 (1948). While a litigant need not be “absolutely destitute,” “an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life.” *Id.* at 339.

The Court grants Plaintiff’s Long Form Application. Plaintiff signed an affidavit stating he is unable to pay the costs of these proceedings and provided the following information: (i) Plaintiff’s average monthly income amount during the past 12 months was \$2,400.00; (ii) Plaintiff recently lost his job, found a new job, and his expected income next month is \$1,700; and (iii) Plaintiff’s monthly expenses total \$2,580.00; (iv) Plaintiff has \$1,200.00 in cash and a bank account. The Court finds that Plaintiff is unable to pay the costs of this proceeding because he signed an affidavit stating he is unable to pay the costs of this proceeding and his monthly expenses exceed his monthly income. Because the Court is granting Plaintiff’s Long Form Application, the Court denies Plaintiff’s Short Form Application as moot.

Section 1915 provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”). 28 U.S.C. § 1915(d). The Court will not order service at this time because the Court has ordered Plaintiff to file an amended complaint. *See* Order to Show Cause, Doc. 5, filed November 29, 2023. The Court will order

service if: (i) Plaintiff files an amended complaint that states a claim over which the Court has subject-matter jurisdiction; and (ii) files a motion for service which includes the address of each Defendant.

IT IS ORDERED that:

- (i) Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form), Doc. 6, filed November 30, 2023, is **GRANTED**.
- (ii) Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), Doc. 2, filed November 21, 2023, is **DENIED as moot**.


UNITED STATES MAGISTRATE JUDGE